
(2023) 03 CAT CK 0038
In the Central Administrative Tribunal
Case No : Original Application No. 917 Of 2019

Sukh Ram & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-03-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 03 CAT CK 0038

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : P.K. Misha, R.N. Joshi, K.K. Ojha

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. This OA, under Section 19 of the AT Act, 1985 is filed seeking relief to quash the impugned order dated / letter dated 31.05.2019 whereby the claim of his son Asha Ram for appointment on compassionate grounds was repudiated and to direct the respondent No. 2 to consider the appointment of his son in the light of the Committee report dated 02.03.2017 and provision given in para 4(b) of the circular RBE78/2006 dated 14.06.2006, and to direct respondent No. 2 to consider his representation dated 12.02.2019 which is wrongly decided at lower level by not putting as per the committee report dated 02.03.2017, and provision of circular dated 14.06.2006 and issue any other order or direction, and award cost.

2. The facts of the applicants is that his date of birth is 18.10.1961 and his date of appointment was 28.11.1986, and he worked as Trolleyman. On 08.07.2009 he was accidentally injured and remained under treatment for quite long. He was later on examined by the Medical Board held on 31.10.2012 at N.C. Railway Hospital, Jhansi and based on their finding he was declared medically unfit as Trolleyman and recommended for alternative employment as per physical fitness by CMS,

Jhansi vide letter No. JHS/M-1/39/SR dated 16.11.2012. In spite of the unfitness of the applicant he was allowed to be continued to perform the duties on his original post Trolleyman. While waiting for posting on the alternative post, he applied for voluntary retirement and for appointment of his son under the LARSGESS Scheme where cut-off date was 01.07.2013, since he was continuously working on the original post, which is of safety category. The applicant having 21 years, 2 months and 18 days qualifying service for the benefits under the scheme filed an application on the prescribed format which was forwarded by ADEN, Dholpur under the letter No. DHO/AE/LARSGESS dated 29.11.2014, but the same was not considered as he was declared medically unfit for the post of Trolleyman. Despite eligible for the benefit under the scheme vide tabulation chart dated 06.11.2013 in which his name is shown at Sl. No. 95 as suitable candidate. In spite of above he was deprived of giving voluntary retirement and job for his ward which is illegal. The applicant appeared before the screening committee on 28.12.2015 who was recommended for deployment as Helper Khalasi, and accordingly he was posted as Helper Khalasi vide office order dated 30.04.2016. The applicant was unable to perform his duties as his physical condition was not good and he was under sick list for some time. In the meantime the applicant submitted his application dated 13.06.2016 with the prayer that he is still not well physically to do the job and requested to be voluntarily retired as partially decategorised employee and his son Asha Ram may be given appointment on compassionate ground. But they were illegally deprived of the benefit of the LARSGESS scheme vide tabulation chart dated 13.11.2014. The applicant was again screened as medically decategorised staff on 21.02.2017 and 22.02.2017 and the committee noted the following:-

- "i. In the first screening on 24.09.2015 page 125 due to some anomaly alternative post was not given.
- ii. In second screening on 28.12.2015 page 145, the alternative post of Helper / Worker was allotted.
- iii. Subsequently candidate represented that his qualifying service is more than 20 years and requested for voluntary retirement and appointment of his son as per circular RBE78/2006.
- iv. After examination the case it is stated that at page 128 ADEN/DHO has mentioned qualifying service 15 years 8 months and 23 days. So ADEN/Gwalior was again advised to examine his qualifying service of 20 years vetted by Finance as on the date of medical de-categorisation.

In view of the above, the Committee is recommending that his VR may be accepted and his son Asha Ram may be appointed in erstwhile group D, G.P. Rs. 1800/- (if found fit in all respect). For VR acceptance, case will be processed by ADEN/Gwalior."

3. The applicant, however, retired as partially medically decategorised employee on 30.04.2018, but his son was not given appointment on compassionate ground

despite the committee report dated 02.03.2017. The applicant further requested vide his application dated 02.07.2018 and 28.04.2018. Hence, the applicant says that for the existing scheme of his department on his de-categorization and voluntary retirement his son should be given compassionate appointment.

4. The respondents have filed their counter affidavit, wherein, they say that the applicant Sukh Ram, S/o Shri Dambhe working as Trolleyman, was declared medically unfit for safety category vide letter dated 16.11.2012 and due to slackness of concerned ADEN, Dholpur the applicant's application under LARSGESS, cut off dated 01.07.2013, was not forwarded to the divisional office in time, and as the applicant was declared medically unfit for safety category before the cut off date 01.07.2013 and at the time of notification he was not on roll in safety category as Trolleyman, so the applicant's case had not been considered under LARSGESS scheme. The applicant was partially medically de-categorised by the medical board on 16.11.2012, but he did not apply for voluntary retirement and has worked as helper Khalasi till 30.04.2018 on which day he voluntarily retired. Railway Board letter dated 14.06.2006 with regard to the appointment on compassionate grounds medically decategorised staff clearly states that minimum 5 years service should be left as on date of his voluntary retirement to make them eligible, but in this case the date of birth of the applicant is 08.10.1961 and he took voluntary retirement on 30.04.2018 at the age of 56 years, 6 months and 22 days, so his left over service was less than 5 years. Hence, the claim of the applicant does not come into the ambit of the said circular. Therefore, request for compassionate appointment was not agreed by the respondents' department. The same was communicated vide letter dated 08.01.2019 and 31.05.2019 to the applicant.

5. Rejoinder affidavit has been filed by the applicants where they reiterate their facts and contentions as taken in the OA.

6. Case came up for final hearing on 03.02.2023. Shri Pradeep Mishra, learned counsel for the applicants and Shri K.K. Ojha, learned counsel for the respondents were present and heard. It was reserved for order. Later on, at the dictation stage it was found that there was requirement for listing this case under the heading "for being spoken to", so the case was posted on 03.03.2023. On which date Shri Pradeep Mishra, learned counsel for the applicants and Shri K.K. Ojha, learned counsel for the respondents were present and heard. No new contentions have come up. I have gone through the entire record and rival contentions carefully.

7. It is an undisputed fact that the applicant Sukh Ram working as Trolleyman was declared medically unfit for safety category vide letter dated 16.11.2012 and at that time LARSGESS scheme has not come yet, which was notified on 01.07.2013 and after decategorization the applicant immediately did not apply for voluntary retirement and hence was continued to work as helper Khalasi upto 30.04.2018 on which day he was voluntarily retired and he was of the age 56 years 6 months and 22 days on the date of his retirement as his date of birth

was 08.10.1961 and his left over service was less than 5 years that day. The relevant circular is also not disputed by Govt. of India, Ministry of Railways, dated 14.06.2006 No. E(NG)II/95/RC-1/94 on appointment on compassionate ground of ward/spouse of medically de-categorised staff on the Railways. The relevant portion is paragraph No. 4 (b), which reads as under:-

"4 (b). Such an appointment should only be given in case of employees who are declared partially de-categorised at time when they have at least 5 years or more service left."

8. The limited question before me is that whether this more than 5 years remaining service has to be taken from the date of voluntary retirement or from the date of decategorization. The applicant contents that it should be from the date of his decategorization which was in 2012 whereas, after that he has continued in service on the post of helper Khalasi till 30.04.2018 on which day he was voluntarily retired, so on the date of retirement his left over service is less than 5 years. For the same reason two benefits of continuation on alternative post and also compassionate ground appointment for his son cannot be the intention of the circular. The five year remaining period in the said circular referred above means "from the date of voluntarily retirement after decategorization". Nothing contrary to this have been either shown by the applicants or coming out of the record, hence, we are not convinced by their arguments that his son is eligible for appointment and hence, I am of the considered opinion that this case is not a fit case for interference with the decisions of the respondents' department. Hence, I pass following orders:-

"The OA is dismissed. There is no order as to costs."